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 COUNTY OF ALAMEDA, ALAMEDA
 COUNTY SHERIFF'S OFFICE, SHERIFF
 GREGORY J. AHERN, TIMOTHY
 VALES, DAVID DRISCOLL, ROBERT
 LAPOINT, and DAVID MCKAIG

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

UNITED UNION OF ROOFERS,
 WATERPROOFERS, AND ALLIED
 WORKERS – LOCAL 81 AFL-CIO, LEROY
 CISNEROS, AND FRANCISCO GARCIA

Plaintiffs,

vs.

COUNTY OF ALAMEDA, ALAMEDA
 COUNTY SHERIFF'S OFFICE, SHERIFF
 GREGORY J. AHERN, in his official
 capacity; TIMOTHY J. VALES (#104529),
 DAVID A. DRISCOLL (#108967), ROBERT
 LAPOINT (#843), and DAVID MCKAIG
 (#364), individually and in their official
 capacities; CASTRO VALLEY UNIFIED
 SCHOOL DISTRICT; JO A. LOSS, KUNIO
 OKUI, JOHN BARBIERI, JANICE
 FRIESEN, and GEORGE GRANGER, in
 their official capacities as members of the
 Castro Valley Unified School District Board
 of Education, SUPERINTENDENT JAMES
 FITZPATRICK, in his official capacity;
 SUSAN GOLDMAN, MICHAEL MILLER
 and JERRY MACY, individually,

Defendants.

Case No.: 08-02281 TEH

**JOINT CASE MANAGEMENT
 STATEMENT**

Date: August 11, 2008

Time: 1:30 p.m.

Courtroom 12, 19th Floor

San Francisco

Judge Henderson

Complaint Filed: May 1, 2008

1. Jurisdiction and Service

This is primarily a civil rights case brought pursuant to 42 U.S.C. section 1983. Plaintiffs LEROY CISNEROS, AND FRANCISCO GARCIA (“Plaintiffs”) claim that the County Defendants¹ and the District Defendants² violated Plaintiffs’ federal and state civil rights, as well as committed various state law torts, when Plaintiffs were arrested while picketing adjacent to a construction site located on Castro Valley High School grounds. Plaintiff UNITED UNION OF ROOFERS, WATERPROOFERS, AND ALLIED WORKERS – LOCAL 81 AFL-CIO (the “Union”) is Plaintiffs’ employer. Federal question jurisdiction is asserted. All defendants have answered the complaint. The District Defendants intend to file and serve a cross-complaint for contractual indemnity against Robert A. Bothman, Inc. the general contractor.

2. Facts

On the morning of May 15, 2007, Plaintiffs, employees of the Union picketed adjacent to a construction site located on the grounds of Castro Valley High School (hereafter the “School”). The School was having a new sports complex constructed (the “Project”). Plaintiffs assert that were conducting lawful informational picketing of a roofing subcontractor, Legacy Roofing, a non-unionized business, which had been hired to do roofing work for the Project. Plaintiffs arrived in the morning, before school began, and as part of their picketing, erected a 10-12 foot tall inflatable rat. Defendants assert that the inflatable rat straddled the sidewalk and was partially on school grounds. The picketing took place in a busy intersection on a sidewalk adjacent to school grounds nearest the entrance to the Project. Plaintiffs assert that the picketing took place on a public sidewalk whereas defendants claim that Plaintiffs were picketing on and immediately adjacent to school grounds. Plaintiffs assert that the picketing was peaceful, and protected under the First Amendment to the United States Constitution and the National Labor Relations Act.

¹ COUNTY OF ALAMEDA, ALAMEDA COUNTY SHERIFF’S OFFICE, SHERIFF GREGORY J. AHERN, in his official capacity; TIMOTHY J. VALES, DAVID A. DRISCOLL, ROBERT LAPOINT, and DAVID MCKAIG, collectively hereafter the “County Defendants.”

² CASTRO VALLEY UNIFIED SCHOOL DISTRICT; JO A. LOSS, KUNIO OKUI, JOHN BARBIERI, JANICE FRIESEN, and GEORGE GRANGER, SUPERINTENDENT JAMES FITZPATRICK, SUSAN GOLDMAN, MICHAEL MILLER and JERRY MACY, collectively hereafter the “District Defendants.”

1 Defendants assert that the picketing was in violation of Penal Code Section 626.8 (disruption of
2 peaceful school and student activities).

3 District Defendants allege that, while on her way to work, District defendant, Associate
4 Principal Susan Goldman saw the picketers and the inflatable rat. District Defendants allege that
5 Ms. Goldman observed that students were forced to step off the sidewalk into traffic in order to get
6 around the picketers and the rat. District Defendants further allege that Ms. Goldman also saw that
7 the picketers blocked the sidewalk and the rat distracted drivers, some of whom were dropping
8 students off at the School. District Defendants allege that, due to the safety hazards, the District
9 contacted the Alameda County Sheriff's Department. Two Alameda County Sheriff's deputies
10 (defendants herein) arrived and spoke with the Plaintiffs. Plaintiffs were asked to deflate the rat,
11 which they did, and cross the street. Defendants assert that Plaintiffs were asked to leave school
12 grounds. Mr. Garcia crossed the street, but Mr. Cisneros remained where he was. Both men were
13 ultimately arrested, and their property, including a video camera, still cameras, picket signs and a
14 letter from Union attorneys, were taken. Defendants allege that Plaintiffs' property was seized
15 incident to their arrest. Mr. Garcia and Mr. Cisneros were both arrested for violating California
16 Penal Code section 626.8, and Mr. Cisneros was also arrested for resisting arrest pursuant
17 California Penal Code section 148(a)(1). Both men were released later that day (Plaintiffs allege it
18 was almost 11 hours after their arrest), Mr. Garcia on his own recognizance, and Mr. Cisneros after
19 posting bail. No further action was taken against them, although Plaintiffs believe that the County
20 Defendants referred this matter to the Alameda County District Attorney's Office for criminal
21 prosecution.

22 The principal factual issues in dispute are:

- 23 a. whether the plaintiffs' conduct posed a safety hazard to students and drivers
24 and was otherwise disruptive to school activities;
- 25 b. whether the individual sheriff's deputies' conduct was appropriate;
- 26 c. whether the District defendants had any involvement at the scene of the
27 arrest and/or directed the activities of the deputy sheriffs; and

d. whether Plaintiffs were picketing on or adjacent to school grounds and whether the picketing took place on a public sidewalk.

3. Legal Issues

The principal legal issues in dispute are:

- a. whether there was probable cause for the arrests;
- b. whether the picketing activity was lawful;
- c. whether any state or federal constitutional rights were violated here;
- d. whether there is any policy, pattern or practice on the part of any entity defendants to violate civil rights, i.e. *Monell* liability;
- e. whether any individual defendants are entitled to qualified immunity;
- f. whether there was any conspiracy to violate civil rights;
- g. whether any state civil rights laws were violated;
- h. whether any state torts were committed; and
- i. whether Plaintiffs were held in custody for an unduly prolonged period of time.

4. Motions

No motions have been filed. The District Defendants intend to file and serve a cross-complaint for contractual indemnity against Robert A. Bothman, Inc. the general contractor. The District Defendants intend to file a motion for summary judgment.

5. Amendment of Pleadings

Plaintiffs have not currently stated any intent to amend the pleadings further.

6. Evidence Preservation

The parties are not aware of any evidence preservation problems regarding evidence in their possession. The parties have agreed to and have taken measures to preserve any electronically stored evidence that they currently have.

7. Disclosures

The parties have not yet made their Fed. R. Civ. P. 26(a) disclosures to each other. They will do so by the date set forth in Rule 26(a).

8. Discovery

None of the parties have conducted any discovery. The parties initially intend to conduct the discovery necessary to adequately prepare for the mediation of this case, scheduled to take within 90 days of July 11, 2008. The County Defendants anticipate that this discovery may include taking the depositions of the two individual plaintiffs and propounding written discovery seeking information regarding this incident and regarding similar incidents alluded to by plaintiffs' counsel. Plaintiffs anticipate propounding written discovery and conducting depositions of individual defendants. The District Defendants will propound written discovery and take depositions as necessary to obtain information regarding the incident and to follow up on the allegations that the District has interfered with picketing on other occasions.

9. Class Actions – This is not a class action.

10. Related Cases

There are no related cases.

11. Relief

Plaintiffs seek to recover monetary damages, statutory penalties, injunctive relief, and attorneys' fees and costs. The Defendants request that Plaintiffs take nothing by their complaint, and Defendants seek recovery of their costs and such other amounts as the Court deems just.

12. Settlement and ADR

The parties have agreed to conduct a mediation of this case within 90 days after July 11, 2008, pursuant to the Court's order referring this matter to early mediation.

13. Consent to Magistrate Judge for All Purposes

Plaintiffs consented to proceeding before a Magistrate Judge. The County Defendants did not consent.

14. Other References

This case is not suitable for reference to binding arbitration, a special master or the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues

Currently the parties are not aware of any issues that can be narrowed, however discovery has not commenced.

16. Expedited Schedule

The parties do not believe that an expedited schedule is appropriate.

17. Scheduling

The parties to this Joint Case Management Conference Statement request:

A trial date of **October 27, 2009**.

A pretrial conference on Monday **October 12, 2009**, 3:00 p.m.

An exchange of witness and exhibit lists by **September 25, 2009**

Initial expert disclosure by all parties by no later than **July 29, 2009**

Rebuttal expert witnesses disclosed by **August 28, 2009**

The parties disagree on a deadline for the non-expert discovery cut-off. Plaintiffs propose a non-expert discovery cut-off deadline of **July 31, 2009**. Defendants propose a non-expert discovery cut-off date of **May 1, 2009**. Plaintiffs believe that a discovery cut-off date of May 1, 2009 would not give them sufficient time to conduct discovery. Plaintiffs are prepared to agree to a later trial date and expert witness disclosure so as to accommodate Defendants' request that disclosure of experts occur after the close of non-expert discovery.

The parties disagree on the deadline to hear dispositive motions. Plaintiffs propose a deadline for hearing dispositive motions of Monday, **August 31, 2009**. Defendants propose a deadline for hearing dispositive motions of Monday, **June 29, 2009**.

18. Trial

Both parties request a trial by jury. The parties anticipate a 5-8 day trial.

19. Disclosure of Non-party Interested Entities or Persons

The County Defendants and District Defendants are public entities and so are not required

1 to disclose. Plaintiffs filed a Certification of Interested Entities or Persons in compliance with
2 Civil Local Rule 3-16. Plaintiffs certify that as of this date, other than the named parties, there is
3 no such interest to report.

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5
6
7 DATED: August 4, 2008

8 LAW OFFICES OF ELLYN MOSCOWITZ

9
10 By: /s/ Sharon Seidenstein, Esq.
11 ELLYN MOSCOWITZ, ESQ.
12 SHARON SEIDENSTEIN, ESQ.
13 Attorneys for Plaintiffs
14 LOCAL 81 UNITED UNION OF
15 ROOFERS WATERPROOFERS &
16 ALLIED WORKERS, LEROY
17 CISNEROS and FRANCISCO
18 GARCIA

15 DATED: August 4, 2008

16 LAW OFFICE OF JIVAKA CANDAPPA

17
18 By: /s/ Jivaka Candappa, Esq.
19 JIVAKA CANDAPPA, ESQ.
20 Attorney for Plaintiffs
21 LOCAL 81 UNITED UNION OF
22 ROOFERS WATERPROOFERS &
23 ALLIED WORKERS, LEROY
24 CISNEROS and FRANCISCO
25 GARCIA

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1 DATED: August 4, 2008

2 BOORNAZIAN, JENSEN & GARTHE
3 A Professional Corporation

4
5 By: /s/ Jill P. Sazama
6 GREGORY J. ROCKWELL, ESQ.
7 JILL P. SAZAMA, ESQ.
8 Attorneys for Defendants
9 COUNTY OF ALAMEDA,
10 ALAMEDA COUNTY SHERIFF'S
11 OFFICE, GREGORY AHERN,
12 TIMOTHY VALES, DAVID
13 DRISCOLL, ROBERT LAPOINT,
14 and DAVID MCKAIG

15 DATED: August 4, 2008

16 STUBBS & LEONE

17 By: /s/ Claudia Leed, Esq.
18 LOUIS A. LEONE, ESQ.
19 CLAUDIA LEED, ESQ.
20 Attorneys for Defendants
21 CASTRO VALLEY UNIFIED
22 SCHOOL DISTRICT, JO A. LOSS,
23 KUNIO OKUI, JOHN BARBIERI,
24 JANICE FRIESEN, GEORGE
25 GRANGER, SUPERINTENDENT
26 JAMES FITZPATRICK, SUSAN
27 GOLDMAN, MICHAEL MILLER
28 and JERRY MACY

25177436967

PROOF OF SERVICE BY ELECTRONIC SERVICE

I, the undersigned, declare as follows:

I am employed in the County of Alameda, State of California. I am over the age of 18 years and not a party to the within action. My business address is 555 12th Street, Suite 1800, P. O. Box 12925, Oakland, California 94604-2925.

On the date indicated below, at the above-referenced business location, I served the **JOINT CASE MANAGEMENT STATEMENT** on the below-named party and caused said document to be transmitted using ECF as specified by General Order No. 45 to the following party:

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Defendants Castro Valley Unified School District

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Oakland, California, on August 4, 2008.

By: /s/ Carmen Kalt

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